

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2961 of 2004

Date of Decision : 10.09.2007

Surta alias Sucha

.....Appellant

versus

Ajit Singh and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Rajnish Gupta, Advocate for the appellant.
Mr.Anil Kshetarpal, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby the challenge to the gift deed dated 6.7.1962 in respect of the land measuring 8 kanals 15 marlas and the consent decree dated 18.8.1981 in respect of 1/3rd share of the land measuring 163 kanals 9 marlas was dismissed.

One Jharu, the common ancestor of the parties, died living behind his son Bhagwana. After the death of Bhagwana, the property was inherited by his three sons namely Surta, Hirda and Parsa in equal shares. Parsa died issueless in the year 1981. During his life time, Parsa executed a gift deed dated 6.7.1962 in favour of defendant Nos.1 & 2 i.e. sons of Hirda and subsequently, suffered a consent decree on 18.8.1981. The said gift deed was challenged by the appellant before the Civil Court on the ground that the property in the hands of Parsa is a Joint Hindu Family coparcenary property and, therefore, he was not competent to execute gift deed or to suffer a consent decree in favour of defendant Nos.1 & 2. It was found that as a matter of fact, the plaintiff was witness to the gift deed dated 6.7.1962,

Exhibit P-1, and therefore, he is estopped from his act and conduct to challenge the said gift deed. It was also found that the challenge to the judgment and decree dated 18.8.1981 is again not sustainable and there is no proof of fraud having been played upon the deceased Parsa. It was found that Parsa has not challenged the decree or gift deed during his life time before his death in the year 1981.

Since Bhagwana inherited the property from his father, therefore, the property cannot be treated as a Joint Hindu Family coparcenary property in view of the judgment “*Commissioner of Wealth Tax, Kanpur etc. versus Chander Sen etc., AIR 1986 Supreme Court-1753*”. Therefore, Parsa being absolute owner could suffer a consent decree in favour of his nephews and also to execute a gift deed.

Learned counsel for the appellant has also pointed out that in fact, vide sale deed dated 21.2.1973, Exhibit D-2, son of the plaintiff has purchased 1/3rd share of the land earlier gifted to defendant Nos.1 & 2 by Parsa vide gift deed dated 6.7.1962, which shows that title of defendant Nos.1 & 2 over the property gifted is not disputed.

Both the Courts below have considered the entire evidence to return a firm finding of fact that gift deed and consent decree are valid and does not suffer from any illegality or irregularity which may entitle the plaintiff to seek declaration.

In view of the findings recorded by the Courts below, I do not find that any substantial question of law arises for consideration of this Court in second appeal. Consequently, the present appeal stands dismissed.

10-09-2007**mohinder***(HEMANT GUPTA)
JUDGE**